

Proceedings

1 (Afternoon session.)

2 THE CLERK: Continued case on trial,
3 167N-2005, People of the State of New York versus Mark
4 Orlando.

5 People ready.

6 MR. HAYDEN: Ready, Your Honor.

7 THE CLERK: Defense ready?

8 MR. LEMKE: Defense ready, Your Honor.

9 THE CLERK: Jurors are not present at this
10 time. The defendant is in the courtroom.

11 Any applications before the jury is brought in,
12 counselor?

13 MR. LEMKE: No, Your Honor.

14 MR. HAYDEN: No.

15 THE COURT: Mr. Hayden, any applications at
16 this time.

17 MR. HAYDEN: No, Your Honor.

18 THE COURT: I will bring the jury in. We will
19 start cross examination, finish it, of the doctor, and
20 then I will, before I remove the jury for a few minutes,
21 I will ask both of you to approach so you can let us
22 know what you intend to do.

23 MR. HAYDEN: Yes.

24 MR. HAYDEN: I may want to make a phone call
25 before I make that decision, if I may.

Proceedings

1 THE COURT: Absolutely.

2 THE COURT: So then at the end of this cross
3 examination or at the end of this witness I will break
4 for ten minutes.

5 THE COURT OFFICER: Jury entering.

6 THE COURT: Yes.

7 THE CLERK: Let the record reflect the
8 presence of the jury and alternates. The defendant is
9 present.

10 Are the People ready?

11 MR. HAYDEN: Ready, Your Honor.

12 THE CLERK: Is the defendant ready?

13 MR. LEMKE: Ready, Your Honor.

14 THE CLERK: Doctor, you're still under oath.

15 THE COURT: Good afternoon, ladies and
16 gentlemen.

17 Mr. Lemke.

18 MR. LEMKE: Thank you very much.

19 THE COURT: You're welcome.

20 CROSS EXAMINATION

21 BY MR. LEMKE:

22 Q Good afternoon, doctor.

23 A Good afternoon.

24 Q Doctor, on December 4, 2004, you previously
25 testified that you were involved with determining the cause

DeMartino - People - Cross

1 of death for Mr. Calabrese; is that correct?

2 A Correct.

3 Q And, as part of that, you performed an autopsy;
4 isn't that correct?

5 A Yes, it is.

6 Q And, I believe you testified that when you first
7 examined the body of Mr. Calabrese, that he was wearing a
8 sweat shirt; isn't that correct?

9 A Correct.

10 Q He was also wearing sneakers, I believe, as well,
11 correct?

12 A Yes, he was.

13 Q And the light green tank top shirt, I believe,
14 correct?

15 A Yes.

16 Q And, one of the notations you made was the age of
17 Mr. Calabrese, correct?

18 A Correct.

19 Q Twenty-four years of age, correct?

20 A Yes.

21 Q His height measuring sixty-six inches, correct?

22 A Correct.

23 Q And his weight 157 pounds, correct?

24 A Correct.

25 Q The sweat shirt that he was wearing when he was

DeMartino - People - Cross

1 brought in, he was still wearing that sweat shirt, correct?

2 A Yes.

3 Q And, I don't believe you had testified that the
4 back of that sweat shirt was cut; isn't that correct?

5 A I did not testify to that, yes.

6 Q Well, it was because it wasn't cut?

7 A It was cut. I just was never asked the question.

8 Q So, the sweat shirt itself was cut from what, in
9 fact, the whole back of that sweat shirt's cut; is that
10 correct?

11 A Yes.

12 Q Up to roughly just underneath the hood, I believe;
13 isn't that correct?

14 A Did you say the back?

15 Q Yes.

16 A It was the front of the sweat shirt.

17 Q Well, when you had the sweat shirt, wasn't the
18 whole back of the sweat shirt cut up?

19 A It was, the back, I am sorry. I was getting mixed
20 up. Yes, it was previously cut.

21 Q Do you need to refresh your notes, I have no
22 problem.

23 Do you need to refresh your memory?

24 A No, I was a little confused. It was the back of
25 the sweat shirt.

DeMartino - People - Cross

1 Q Okay. And the back was cut up to the bottom all
2 the way up just roughly underneath the hood; isn't that
3 correct?

4 A I don't believe I described specifically how high
5 up the cut went, but I believe it went up quite high.

6 Q Did you make any notations as to where that ended?

7 A No.

8 Q And when you began to then examine Mr. Calabrese,
9 there were notations made regarding entrance wounds and exit
10 wounds; isn't that correct?

11 A Yes.

12 Q And when you testified regarding the number, just
13 so we're clear, the number that you assigned each entrance
14 wound, was not based in any way on the shot that would have
15 first struck Mr. Calabrese, correct?

16 A Correct.

17 Q In fact, as part of your examination, would you be
18 able to tell this jury whether the entrance wound at number
19 three or number two or number one, which had occurred first?

20 A From the autopsy alone, I could not say.

21 Q And, in fact, if you refer to what you have as
22 number three, did you make up, I think, a work, autopsy work
23 sheet regarding that?

24 A I think you're referring to my notes.

25 MR. LEMKE: Well, if I can have this marked, I

DeMartino - People - Cross

1 think, B, I believe, two pages.

2 THE COURT: Defendant's B for identification.

3 THE COURT OFFICER: Defendant's B marked for
4 identification.

5 The witness has defendant's B.

6 MR. LEMKE: Show it to the doctor, please.

7 Q Doctor, I may be a little unsure, are those your
8 notes?

9 A No, they are not.

10 Q So that illustration there is not yours?

11 A Correct.

12 Q Okay. When you were examining Mr. Calabrese --
13 could I have that back, please -- you observed an entrance
14 wound to the back of Mr. Calabrese's ear which would be the
15 right side of his back of his head, correct?

16 A Correct. It was posterior to the ear.

17 Q Okay. That is an entrance wound, correct?

18 A Correct.

19 Q And, there was no exit wound for that; is that
20 correct?

21 A Correct.

22 Q Now, you also examined the right forearm of
23 Mr. Calabrese, correct?

24 A Yes.

25 Q And, you also examined that there was a hole, two

DeMartino - People - Cross

1 holes in the sweat shirt on the right arm of Mr. Calabrese,
2 correct?

3 A Correct.

4 Q And you had indicated through your examination that
5 the entrance wound would be to the, if I put my hands
6 straight down, for example, the entrance wound was to the
7 outside, correct?

8 A Well, to look at anatomically, correct, you would
9 have your palm facing forward so then the end wound would be
10 back on the forearm.

11 Q Which would be right here, correct?

12 A Yes.

13 Q When you say back forearm, as I am putting my hand
14 straight down coming in this way, correct?

15 A If your hands's in that position, yeah.

16 Q About, I think it was three and-a-half inches down
17 from the elbow, correct?

18 A I believe so.

19 Q And, there was an exit wound to that coming from
20 the inside of the arm?

21 A Correct.

22 Q Correct. And, while you're performing the autopsy
23 there was another detective, I think, that was there at one
24 point, wasn't there, with you?

25 A There were detectives, yes.

DeMartino - People - Cross

1 Q And, based upon your evaluation regarding the
2 entrance wound and the exit wound to the right arm of
3 Mr. Calabrese, and the entrance wound which you have labeled
4 as number three just behind the right ear was consistent with
5 being from the, or would be consistent with the same track of
6 the same bullet, correct?

7 A Yes.

8 Q And, in fact, while you're performing the autopsy,
9 you made a notation of that, correct?

10 A Yes.

11 Q And, I think Mr. Hayden had asked you on direct
12 that clearly if somebody's facing someone with the gun and
13 it's shot clearly there is no way for that bullet to go
14 through his arm, pass through his arm and into his head if he
15 is facing him, correct?

16 A Correct.

17 Q But based on your qualifications and your
18 examination, if I'm facing you and, in fact, if I am facing
19 you, and I am maybe four feet in front of you, and you have a
20 weapon in your hand, the magazine, .44, it's raised, now I am
21 facing you, and if I at the last minute begin to go like
22 this, isn't your findings consistent with the bullet coming
23 in through here, out through the inside, in through the rear
24 of his ear and into the brain?

25 Isn't that correct?

DeMartino - People - Cross

1 A That would be correct, but at the time --

2 Q Isn't that correct, yes or no?

3 A Struck, you're not facing me, though.

4 Q I am sorry.

5 A You would not be facing me at the time the bullet
6 initially would strike your arm.

7 Q Isn't that correct, if I am facing you right now,
8 my body is facing you, correct?

9 A Yes.

10 Q I am three and-a-half feet from you, correct?

11 A Yes.

12 Q You raised a weapon, correct?

13 A Yes.

14 Q My body's still facing you, correct?

15 A Yes.

16 Q I go like this to protect myself, maybe it'
17 semantics, whether I am facing you or not, isn't it
18 consistent, if the shot is fired, that it goes into here,
19 exits the inside, and goes right into my ear?

20 A Yes.

21 Q In fact the track of that shot is consistent as it
22 travels into the head; isn't that correct?

23 A Correct.

24 Q From that angle, correct?

25 A Yes.

DeMartino - People - Cross

1 Q Okay. Also the other two entrance wounds you had
2 talked about, being one and two, clearly in the back of the
3 head, correct?

4 A Yes.

5 Q That at least one of them, not, appeared at least
6 one of them was consistent with the face of Mr. Calabrese
7 being on the ground; isn't that correct?

8 A Yes.

9 Q Because the injury for the exit wound was
10 consistent with there not being perhaps an ability for the
11 wound to flush itself out but being on a surface, a road,
12 correct?

13 A Correct.

14 Q Now, of course you recorded that as well, correct?

15 A Yes.

16 Q And in looking at the sweat shirt in the back, you
17 made a notation this was a large sweat shirt he was wearing,
18 correct?

19 A Size large, yes.

20 Q As far as size, correct?

21 A Yes.

22 Q I think a bulky, you have a large sweat shirt,
23 bulky, large sweat shirt; is that correct?

24 A I didn't use the term bulky. I just said size
25 large.

DeMartino - People - Cross

1 Q Well, you made a notation in your report, correct?

2 A I never used the word bulky.

3 Q Large sweat shirt?

4 A Yes.

5 Q And, did you determine or were you involved with
6 determining whether or not there was any bullet wipe?

7 A No.

8 Q On the sweat shirt?

9 A No.

10 Q Okay. So, any marks or any notations as to where
11 they were was made by somebody else; isn't that correct?

12 A I saw what looked to me like bullet wipe, but I am
13 not qualified to actually make that determination.

14 Q Okay. But your observation was that it looked like
15 the bullet wipe was in two spots, correct?

16 A Correct.

17 Q But yet there was in the back of the sweat shirt
18 since you testified there was four holes to the upper left
19 quadrant of the sweat shirt, correct?

20 A Correct.

21 Q And you had also testified if this large sweat
22 shirt, much like if something is folded, that if it's, shots
23 comes through it may certainly go through like, for example,
24 if I use my left hand, if a shot comes in here through it
25 will come in through here, through this finger, then this

DeMartino - People - Cross

1 finger, then I will have almost three entrance wounds and
2 three exit wounds, correct?

3 A I kind of lost count. I don't know, ending of six
4 holes, it's possible to have multiple holes if the garment is
5 folded.

6 Q And if it's bunched, correct?

7 A Correct.

8 Q So, you weren't there on December third when the
9 body was first observed, correct?

10 A Correct.

11 Q And so your testimony is that if the sweat shirt,
12 this large sweat shirt, is bunched in some way in the back
13 like my jacket is now, let the record reflect, and my hand's
14 up protecting myself, the shot coming through, when I am on
15 that, the ground, could leave one, two holes, before it
16 enters into the head; isn't that correct?

17 A I think it would if the shirt was bunched, so that
18 the bullet went through it more than once, it would have to
19 leave a minimum of, have to cause a minimum of three holes.

20 Q Right. In fact, what you then take a look at the
21 residue, or any bullet wipe, to determine, okay, here's where
22 the first hole was, obviously the second doesn't have any
23 bullet wipe, that had been bunched up, correct?

24 A Correct.

25 Q Now, did you wind up removing the sweat shirt?

DeMartino - People - Cross

1 A Yes.

2 Q And then I think it was then protected to be
3 analyzed by another unit; is that correct?

4 A Yes.

5 Q Also, the shirt itself, or the sweat shirt, you had
6 indicated, maybe not.

7 Withdraw the question.

8 You didn't make notations as to the measurements where
9 each of those holes were, correct?

10 A I did not describe on the shirt where exactly those
11 perforations were, correct.

12 Q And so it's your testimony then, let me ask you
13 this, based upon your findings and analyzing those holes,
14 clearly, that sweat shirt was bunched up, correct?

15 A I would say that's the most likely scenario.

16 Q Okay. Thank you. I have nothing further.

17 THE COURT: Mr. Hayden.

18 MR. HAYDEN: Sure. Sure.

19 REDIRECT EXAMINATION

20 BY MR. HAYDEN:

21 Q Doctor, would you step down just a moment before
22 the jury.

23 There were a lot of questions about bunched up.

24 Now, if the garment were like this, the bullet would
25 leave a hole here, and a hole here, and then if it went

DeMartino - People - Redirect

1 through the garment at this point, just beyond that point, it
2 would be three holes, one, two, behind it, and one through;
3 is that right?

4 A Correct. That is what I meant when I said they
5 would have to be a minimum of three holes for the bullet to
6 enter the body, and for it to leave more than one hole, if it
7 was bunched like that, you'd have to have a minimum of three
8 holes.

9 Q A single fold could leave you with three holes?

10 A Sure.

11 Q If it were like that; is that right?

12 A Correct.

13 Q Okay. Please retake the witness stand.

14 MR. HAYDEN: Nothing further, Your Honor.

15 MR. LEMKE: Nothing at all. Thank you,
16 doctor.

17 THE COURT: Doctor, have a good day.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 THE COURT: Counsel, approach the bench,
21 please.

22 (Whereupon, there was a bench conference held
23 off the record.)

24 THE COURT: Ladies and gentlemen, we're going
25 to take an approximately fifteen minute break. Going to

Proceedings

1 bring you back in the room. Same admonitions apply.
2 Don't discuss the case amongst yourselves or with anyone
3 else.

4 You will be in the jury room. Try to stick to that
5 fifteen minutes as possible.

6 THE COURT OFFICER: Leave your note pads on
7 the chair if you're taking notes and follow me out.

8 THE COURT: We will resume in fifteen
9 minutes, Mr. Hayden.

10 MR. HAYDEN: Yes, Your Honor.

11 (Whereupon, there was a brief recess in the
12 proceedings.)

13 THE CLERK: Continued case on trial, 167N-05,
14 People versus Mark Orlando.

15 People ready.

16 MR. HAYDEN: Ready, Your Honor.

17 THE CLERK: Defense ready?

18 MR. LEMKE: Defense ready.

19 THE CLERK: Let the record reflect the
20 presence of the defendant, the jurors are not in the
21 courtroom at this time.

22 THE COURT: Mr. Hayden, do you want quantities
23 to be heard with respect to the next witness?

24 MR. HAYDEN:

25 MR. HAYDEN: Yes Your Honor.

Proceedings

1 People propose to introduce through Detective Scott
2 Kovar, a mannequin that Detective Kovar has used to
3 demonstrate that the trajectories of the bullets that
4 hit the left side of the back of Bobby Calabrese's head,
5 he's prepared that with a sweat shirt, over the upper
6 part of the mannequin, to show how those bullets could
7 have left the holes that were left and left the aligning
8 wounds that were left, and that is really the only
9 purpose of this, to show the jurors how the one bullet,
10 for example, could have left three holes as was
11 discussed with Dr. DeMartino by both defense counsel and
12 myself.

13 It's a piece of demonstrative evidence to
14 demonstrate to the jurors what his testimony is all
15 about. How the bullet holes in the sweat shirt and the
16 wounds could have lined up as they had. Limited purpose
17 for which this exhibit is offered.

18 In addition, there is a chart that has been made,
19 this is based on measurement that Detective Kovar took
20 of the sweat shirt that is already in evidence. The
21 demonstration is based on Detective Kovar's measurements
22 of the sweat shirt in evidence, and on the autopsy
23 report, and the measurements that Dr. DeMartino took,
24 those measurements also came in evidence through Dr.
25 DeMartino's testimony.

Proceedings

1 And, any objections the People submit counsel would
2 have to this exhibit would go to its weight and not its
3 admissibility for the limited purpose for which we're
4 offering it. It's a very limited purpose.

5 THE COURT: Mr. Lemke.

6 MR. LEMKE: Your Honor, at this point I would
7 object to, I believe, first time this was available was
8 yesterday, clearly we're more than halfway, three
9 quarters of the way through the trial. Anything that is
10 documented as demonstrative may very well be, for
11 example, a weapon that is introduced in evidence, the
12 sweat shirt that may be in evidence, that was to be
13 taken out and paraded to the jury and shown where the
14 particular holes, how it would be bunched up, that is
15 demonstrative evidence, to come in now and have me for
16 the first time see a mannequin with a sweat shirt
17 without having the ability to previously examine it,
18 look at it, have anybody else I need to examine that as
19 well is clearly prejudicial. I don't see, it's clearly
20 something which I did not have proper notice of, in this
21 matter, and therefore I would object to that certainly
22 at this time.

23 THE COURT: The Court will give you an
24 opportunity to have any adjournment necessary if you
25 feel it necessary to bring in your own expert to review

Proceedings

1 this and rebut it.

2 The application by the People is granted. The
3 Court feels, if anything, the arguments by defense
4 counsel would go to weight. There's clearly an issue
5 before this jury with respect to the shots and the
6 trajectory thereof, and the Court feels this would be
7 probative and would demonstrate to the jury and help
8 assist them in understanding the arguments and evidence
9 before them.

10 Accordingly, defense counsel's application to
11 preclude this is denied. People's application is
12 granted.

13 Anything further?

14 MR. HAYDEN: Just need a little time to set
15 up.

16 THE COURT: Go ahead.

17 (Whereupon, there was a brief recess in the
18 proceedings.)

19 THE COURT: Ready for the jury, Mr. Hayden?

20 MR. HAYDEN: Yes, Your Honor.

21 THE COURT: Mr. Lemke.

22 MR. LEMKE: Yes, Your Honor.

23 THE COURT OFFICER: Ready for the jury, Your
24 Honor.

25 THE COURT: Yes. Thank you.

Proceedings

1 THE COURT OFFICER: Jury entering.

2 THE CLERK: Let the record reflect the
3 presence of the jury, alternates, counsel, defendant.

4 People ready.

5 MR. HAYDEN: Ready, Your Honor.

6 THE CLERK: Defense ready?

7 MR. LEMKE: Defense ready, Your Honor.

8 THE COURT: Thank you for your patience,
9 ladies and gentlemen.

10 Mr. Hayden, call your next witness.

11 MR. HAYDEN: Scott Kovar.

12 SCOTT J. KOVAR, detective, called as a witness on behalf of
13 the People, after having been first duly sworn, and
14 having stated his shield number as 698, and his command
15 as the Forensics Evidence Bureau, Nassau County Police
16 Department, took the witness stand and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. HAYDEN:

20 THE CLERK: State your name, spell your last
21 name for the record, your shield number and command.

22 THE WITNESS: Detective Scott J. Kovar,
23 K-O-V-A-R, shield 698, Forensic Evidence Bureau, Nassau
24 County Police Department.

25 THE COURT: Good afternoon.

COPY

Proceedings

1 THE WITNESS: Good afternoon.

2 THE COURT: Mr. Hayden.

3 MR. HAYDEN: Yes, Your Honor.

4 Q Good afternoon, detective.

5 A Good afternoon.

6 Q How long have you been a member of the Nassau
7 County Police Department?

8 A Approximately twenty-three years.

9 Q How long a detective?

10 A Approximately fifteen years.

11 Q How long with the forensic evidence bureau?

12 A Twenty-one years.

13 Q Have you been involved with criminalistics?

14 A Yes, I have.

15 Q What do you mean by criminalistics?

16 A I am assigned to the criminalistics section of the
17 laboratory in which we analyze trace evidence found at the
18 scene of a crime. Trace evidence can include such things as
19 hair and fibers, paint chips, glass chips, physical
20 impression evidence such as footwear impressions, tire
21 tracks, gunshot residue, and crime scene reconstruction.

22 Q Have you worked with clothing?

23 A Yes, I do.

24 Q On a regular basis?

25 A Yes.

Kovar - People - Direct

1 Q Describe any training you had in the field of
2 criminalistics?

3 A I have a B.S. Degree in biology from the College of
4 Environmental Science and Forestry. I am currently finishing
5 my masters in forensic science from John Jay College,
6 primarily in the field of criminalistics. I have taken
7 numerous courses, undergraduate, and at the graduate level in
8 criminalistics, and I am a diplomate of the American Board of
9 Criminalistics. And, I also teach a basic criminalistics
10 course and a forensic microscopy course as an adjunct
11 instructor at Pace University in their forensic science
12 department.

13 Q Describe any experience you had in the field of
14 criminalistics?

15 A I have taken lots of work shops and courses, and
16 also done hundreds of cases over the years.

17 Q How many times have you examined clothing in the
18 course of your work?

19 A Thousands of times.

20 Q Have you examined the clothing of shooting
21 victims?

22 A Yes, I have.

23 Q How often?

24 A Hundreds of times.

25 Q Have you worked with autopsies reports in the

Kovar - People - Direct

1 course of your work?

2 A Yes, I have.

3 Q How many times?

4 A I would say over a hundred.

5 Q Have you worked with medical examiners?

6 A Yes.

7 Q How often?

8 A Same amount, over a hundred.

9 Q Have you worked with firearm experts in the course
10 of your work?

11 A Yes, I have.

12 Q How often?

13 A Probably in the thousands.

14 Q Have you prepared demonstrative exhibits for
15 courtroom display?

16 A Yes, I have.

17 Q How often?

18 A I would say depending on what you term courtroom
19 display, I would say thousands of times.

20 Q Have you testified as an expert in this field?

21 A Yes, I have.

22 Q How many times?

23 A Approximately seventy-five times.

24 Q Where have you testified?

25 A In all the courts of Nassau County, County Court

Kovar - People - Direct

1 District Court, Family and Traffic Court. Also in Federal
2 Court out in Melville. And also in Kings County Court.

3 Q Have you become involved in investigating the
4 shooting of a death young man named Bobby Calabrese?

5 A Yes, I did.

6 Q Have you examined an article of clothing during the
7 course of the investigation?

8 A Yes, I did.

9 Q Describe that item of clothing?

10 A It was a Lee sweat shirt, ultra weight sweat
11 shirt. It was distributed buy or sold by a surf shop in Long
12 Beach and had the logo Unsound on the back, and also the name
13 of Unsound on the front of the sweat shirt. It was a double
14 XL large sweat shirt.

15 MR. HAYDEN: May I please have 35 in evidence
16 shown to the witness.

17 THE COURT: Yes.

18 THE COURT OFFICER: The witness has 35 in
19 evidence.

20 Q Do you recognize that?

21 A Yes, I do.

22 Q Is that the sweat shirt you examined?

23 A Yes, it is.

24 Q How do you know it is?

25 A It's got my name and shield number on it, and I

Kovar - People - Direct

1 recognize the sweat shirt.

2 Q Do you recognize the condition of the sweat shirt?

3 A Yes, I do.

4 Q Describe how you examined this sweat shirt that is
5 35 in evidence.

6 A The first thing I did was I laid it out on a table
7 and I examined it stereo microscopically. That is a low
8 power magnification microscope. I am looking for, first,
9 tears and defects in the article. And then I also took
10 notice of some holes. I also took a SEM adhesive stub where
11 I lift particles around the holes that I could test later on
12 to see if there's gunshot residue or not. I did that. And,
13 then I placed pins in the locations where I saw partially
14 burned and unburned particle grains around the holes and
15 recorded that as well photographically. And then we compared
16 the medical examiner's report, the wound tracks documented by
17 the medical examiner, with these bullet holes in the garment
18 to determine the bullet trajectories.

19 Q Describe any observations you compiled while
20 examining People's 35 in evidence?

21 A The sweat shirt had a pretty large tear at the
22 front of the V neckline portion of the seam. It was pulled
23 apart. And also the left front pocket was pulled away from
24 the seam as far as defects. There were a number of holes in
25 the sweat shirt. There's at least four or so holes in the

Kovar - People - Direct

1 back of the sweat shirt, and then one hole in the back of the
2 sleeve and the front, or two holes on the arm and right arm.
3 And also a hole in the front of the sweat shirt.

4 Q Did you do measurement of what you observed in
5 People's 35 in evidence?

6 A Yes, I did.

7 Q Describe for the jury how you did that.

8 A Just using a metric ruler. I measured the
9 distances, usually two, two coordinates from the midline of
10 the sweat shirt, let's say, and from, inferior from the
11 neckline, for instance.

12 Q And you include those holes when you were
13 measuring?

14 A Yes.

15 Q Have you prepared an exhibit to show the jurors the
16 measurements you made?

17 A Yes, I have.

18 Q Has it been enlarged?

19 A Yes.

20 Q Has it been mounted?

21 A Yes.

22 MR. HAYDEN: May I have this marked 71 for
23 identification, please, and shown to the witness.

24 THE COURT OFFICER: People's exhibit 71 marked
25 for identification.

Kovar - People - Direct

1 The witness has 71 for ID?

2 A Okay.

3 Q Do you recognize that?

4 A Yes, I do.

5 Q What is it?

6 A That is the courtroom display I had of the
7 measurement I made on the holes of the sweat shirt.

8 Q Is that a fair and accurate display of your
9 measurement?

10 A Yes, it is.

11 MR. HAYDEN: People offer it in evidence, Your
12 Honor.

13 MR. LEMKE: No objection, Your Honor.

14 THE COURT: Mark it in evidence.

15 THE COURT OFFICER: People's 71 marked in
16 evidence.

17 Do you want it shown to the witness?

18 MR. HAYDEN: May I, with the Court's
19 permission, have the witness step down and display this
20 exhibit to the jury?

21 THE COURT: Yes.

22 THE COURT OFFICER: Jurors are have having
23 problems seeing.

24 THE COURT: Can you move it closer to the
25 jury?

Kovar - People - Direct

1 Mr. Lemke, you can if you have to move.

2 Q Just describe what it depicts?

3 A Okay. The bottom two pictures show the sweat shirt
4 sort of an overall view of, one on the left side of the
5 diagram, the bottom shows the back view of the sweat shirt,
6 the right side shows the front view of the sweat shirt, and
7 then the one on top is just an enlarged portion of the back
8 view, close up view of the holes in the back of the sweat
9 shirt.

10 You will notice this mermaid looking logo that's
11 presented on the screen, to the back of sweat shirt, that's
12 just from the surf shop that sells the sweat shirts, but just
13 before that I have what I labeled hole number one, and that
14 is, the numbers don't correspond to any sequence of rounds.
15 It's just for description purposes, bullet hole number one
16 exhibits what is known as bullet wipe. When a bullet goes
17 through clothing, sometimes the clothing wipes the bullet
18 clean. You get lubricant and gunshot residue powder around
19 the ring, around the hole. And that is a good indication
20 that that's the first hole that was made through that, any
21 kind of garment. You see that bullet hole number one, I
22 measured it, it was 50 millimeters left of the midline of the
23 sweat shirt, and about a 130 millimeters inferior of the
24 neckline. Here. And it appears to be just above the logo of
25 the mermaid.

Kovar - People - Direct

1 Hole number two also exhibits the bullet wipe, and you
2 will see there's a dark ring around that hole also indicating
3 that is the first thing that that bullet hit probably. It's
4 measured, I measured it at 85 millimeters here left of the
5 midline and 100 millimeters inferior of the neckline. So,
6 it's about an inch or two above the hole number one to the
7 lateral side.

8 Hole number three, which I labeled number three, is 95
9 millimeters left of the midline, 80 millimeters inferior to
10 the neckline. It sits just above hole number one, two, no
11 bullet wipe, and later on you will see that I stuck pins to
12 represent, or right next to all the unburnt particle grain.
13 There was very few unburnt particle grain.

14 Number three, I'll explain why that is important later.

15 Hole number four is actually starting into the hood
16 already and it's 20 millimeters above the neckline into the
17 hood, 70 millimeters left of the midline.

18 So, those are the holes basically on the back of the
19 sweat shirt. There's four holes there. Also in the back,
20 right sleeve, there is what we call, I call, hole number
21 five. That was measured about 150 millimeters from the end
22 of the cuff pretty much along the midline of the sleeve, and
23 you could label this hole, I think I called it hole number
24 seven which was the front of that corresponding hole in the
25 front of the sleeve which the bullet passed through.

Kovar - People - Direct

1 And then finally hole number six here is 60 millimeters
2 right of the midline, 135 millimeters inferior neckline of
3 the front of the sweat shirt.

4 The reason why I said the amount of unburnt particle
5 grain was important around hole number three, I believe that
6 is a fold in the sweat shirt. If you have a fold in an
7 article of clothing, a bullet can go through and actually
8 make an additional hole in the sweat shirt or in the
9 clothing. That is what I believe happened here.

10 This sweat shirt is pulled up, and there's a fold here,
11 and this round which first went in through hole number one,
12 then goes through the fold, causes hole number three, and
13 then reenters back into the hood. There was a few particle
14 grain, number four, into number four, then becomes, the wound
15 track on the lateral side of decedent's head which goes
16 across his head and exits his cheek bone on the right side,
17 and is basically what we call a shored round. It was stopped
18 by the cement on the street. That is where the bullet jacket
19 from that bullet was recovered, right inside it, made it come
20 out -- step back a second.

21 It comes back, labeled hole number six in the front of
22 the sweat shirt. So, that is actually also an indication
23 that sweat shirt is pulled up. This whole number six is
24 basically corresponding up by decedent's cheek bone.

25 Another round goes through hole number one, does not go

Kovar - People - Direct

1 through any other folds in the sweat shirt, and enters into
2 the decedent's back of his head. That is the one more on the
3 left side of the head, but more medial towards the midline
4 also going across the decedent's head. It doesn't exit the
5 cheek bone.

6 There is a round that goes through the back of the
7 sleeve of the sweat shirt. There is a number of particle
8 grains present there. It then comes through the front of the
9 arm of the sweat shirt and then, I believe, reenters back in
10 and becomes, doesn't go through the hood of the sweat shirt,
11 but goes through the head of the decedent on the right side.

12 Q Please retake the witness stand.

13 Have you reviewed Bobby Calabrese's autopsy report
14 during the course of the investigation?

15 A Yes, I have.

16 Q Have you reviewed the position of the bullet wounds
17 to Bobby's body?

18 A Yes, I have.

19 Q Have you prepared an exhibit to demonstrate how
20 bullet holes to the back of Bobby Calabrese's sweat shirt
21 aligned with wounds to the left side of his head?

22 A Yes, I have.

23 Q Describe for the jury how you did that?

24 A I didn't feel that that poster you saw showed that,
25 how that sweat shirt pulled up and the folds in the sweat

Kovar - People - Direct

1 shirt. I wanted to make it clear to you how the holes in the
2 clothes were made by these bullet trajectories so I actually
3 purchased an exemplar sweat shirt from that surf shop, the
4 same size as the decedent was wearing. And then I measured,
5 accurately measured from this exhibit we looked at, the
6 decedent's sweat shirt.

7 I used the same measurements and made holes in the
8 exemplar sweat shirt. Then using the medical examiner's
9 measurements I placed, it's actually the sticky puddly type of
10 material on portions of this mannequin, then put rods through
11 so I would be able to see the trajectories how, in the sweat
12 shirt, was pulled up at the time.

13 Q Describe how you determined the location of the
14 bullet wound as you depict them on this mannequin?

15 A The bullet wounds, I followed Dr. DeMartino and Dr.
16 O'Reilly's notes and the autopsy report of the wound tracks
17 and used those measurements as exact measurements and
18 measured it on the mannequin and placed a, basically X there,
19 and then made my display.

20 Q You used those autopsy report measurements to
21 locate each of the wounds?

22 A That's correct.

23 Q Describe the exhibit you prepared and what it's
24 supposed to show?

25 A I really wanted a three dimensional type of display

Kovar - People - Direct

1 so we got a mannequin, it's a natural size mannequin that can
2 articulate pretty much like the human form can. It's used by
3 art students to sketch the human form. And, I, using the
4 autopsy report and measurements accurately measured the
5 mannequin and then I placed holes in the sweat shirt to the
6 same measurements I measured on the decedent's sweat shirt
7 and then I basically brought it here today for you to see.

8 Q Would you step down, please?

9 A Yes.

10 Q Take a look at that. Do you recognize it?

11 A Yes, I do.

12 Q What is it?

13 A This is the courtroom display I made for you
14 today.

15 Q Is that a fair and accurate representation of the
16 way the holes to the back of Bobby's sweat shirt aligned with
17 the wounds to the left side of the back of Bobby's head?

18 A Yes, it is.

19 MR. HAYDEN: I offer that in evidence.

20 MR. LEMKE: Brief voir dire.

21 THE COURT: Yes

22 VOIR DIRE EXAMINATION

23 BY MR. LEMKE:

24 MR. LEMKE: Detective, you may take the stand.

25 The project you're now referring to, when for

Kovar - People - Direct

1 the first time did you put this together?

2 THE WITNESS: It was probably, getting the
3 mannequin, I would say probably within the last two
4 weeks.

5 MR. LEMKE: When for the first time did you
6 have the sweat shirt?

7 THE WITNESS: Also probably two weeks ago.

8 MR. LEMKE: And when for the first time, you
9 brought the mannequin I take it back to headquarters?

10 THE WITNESS: Yeah, within that time period,
11 correct.

12 MR. LEMKE: When you say it was last week, it
13 was more like a week ago?

14 THE WITNESS: Mannequin was a week ago. The
15 sweat shirt showed up the same time.

16 MR. LEMKE: You didn't get the mannequin until
17 we started trial here, after hereafter we started.

18 THE WITNESS: I don't know the actual start of
19 the trial. I am not sure.

20 MR. LEMKE: Well, the trial started, jury
21 selection, last Tuesday.

22 THE WITNESS: I would think the mannequin was
23 in by then.

24 MR. LEMKE: Did you make any notations as to
25 when that mannequin came in?

Kovar - People - Direct

1 THE WITNESS: I have the bill of sale.

2 MR. LEMKE: Do you have that with you?

3 THE WITNESS: Don't have it with me, but I do
4 have a bill of sale for it.

5 MR. LEMKE: And, could you tell the jury where
6 you got it?

7 THE WITNESS: I bought it at Pearl Paint, the
8 art supply store.

9 MR. LEMKE: And, in fact, when you purchased
10 it, did you go and ask for perhaps a body type fitting
11 the one of Mr. Calabrese?

12 THE WITNESS: No. I knew from the Internet
13 they only had one natural size male mannequin and this
14 is it.

15 MR. LEMKE: So, you ordered a body type which
16 doesn't fit Mr. Calabrese to begin with, correct?

17 THE WITNESS: It's pretty close. It's about
18 the same height as Mr. Calabrese was.

19 MR. LEMKE: Do you remember what height Mr.
20 Calabrese was?

21 THE WITNESS: I believe he is 5'7".

22 MR. LEMKE: If I told you 5'6", would that
23 refresh your recollection?

24 THE WITNESS: Right. That's correct,
25 sixty-six inches.

Kovar - People - Direct

1 MR. LEMKE: The dummy's 5'8"?

2 THE WITNESS: That is the way they list it on
3 the catalog. The height of the dummy is not critical.

4 MR. LEMKE: What about the weight of the
5 dummy?

6 THE WITNESS: I would say the same. Weight is
7 certainly not critical in this case.

8 MR. LEMKE: Well, let me you ask you this.

9 You have a sweat shirt for this mannequin,
10 correct?

11 You made sure it was extra large, double X, I
12 believe?

13 THE WITNESS: Right.

14 MR. LEMKE: Because that is the size of
15 evidence, number 35, in evidence; isn't that correct?

16 THE WITNESS: That's correct.

17 MR. LEMKE: And, did you take 35 to put it on
18 this mannequin?

19 THE WITNESS: No on this one, no.

20 MR. LEMKE: No. And, did you confer with the
21 medical examiner regarding the track marks that you, I
22 think indicated, in the head of this man?

23 THE WITNESS: Yes, I did.

24 MR. LEMKE: In fact, you took whatever
25 measurements you could find, correct?

Kovar - People - Direct

1 THE WITNESS: From his autopsy report,
2 correct.

3 MR. LEMKE: And so now you take the sweat
4 shirt and you put it on this dummy, correct?

5 THE WITNESS: Correct.

6 MR. LEMKE: And the measurements you used were
7 from notations that were made, correct?

8 THE WITNESS: From the actual autopsy report.

9 MR. LEMKE: And, I think, just one more
10 question, I think you had indicated that the sweat shirt
11 was bought down from, only one location this sweat shirt
12 is sold at; is that correct?

13 THE WITNESS: It's a Lee sweat shirt. So, you
14 can get a Lee ultra weight sweat shirt from a number of
15 distributors. If you wanted to one with the actual log
16 of the surf shop I guess you'd have to get it from
17 them.

18 MR. LEMKE: Right. Did you happen to check
19 when Mr. Calabrese purchased that sweat shirt?

20 THE WITNESS: No, that was not done.

21 MR. LEMKE: It wasn't done. Told you it was
22 purchased eight months ago, would that refresh your
23 recollection in any way?

24 THE WITNESS: Wouldn't make a difference to
25 me.

Kovar - People - Direct

1 MR. LEMKE: Because you didn't check on that,
2 did you?

3 THE WITNESS: I don't know if they actually
4 have records of who purchased the sweat shirt at the
5 surf shop.

6 MR. LEMKE: You or anybody else didn't ask?

7 THE WITNESS: Not that I'm aware of.

8 MR. LEMKE: Subject to further cross, Your
9 Honor.

10 THE COURT: Mark it into evidence.

11 THE COURT OFFICER: People's 70 marked in
12 evidence.

13 DIRECT EXAMINATION

14 BY MR. HAYDEN:

15 Q Please step down, detective.

16 Detective, you positioned Bobby's body in a certain way,
17 the mannequin in a certain way, while displaying it on this
18 table.

19 Did you determine how to position the mannequin in
20 accordance with the photograph in evidence?

21 A Yes, I did.

22 Q Was that People's exhibit 5 in evidence?

23 Let me show it to you?

24 A Yes, it is.

25 MR. HAYDEN: May I display it to the jury,

Kovar - People - Direct

1 Your Honor?

2 Q Detective, using that exhibit in evidence, show
3 the jury what it's intended to demonstrate?

4 A These rods are to show the path of the bullets, the
5 trajectories. You will see they're pretty parallel before I
6 move them. I believe they're in sequence with each other.
7 The weapon being at the location sort of here.

8 THE COURT: Just speak up, detective, please.

9 A The weapon being somewhere here in this orientation
10 and both rounds not being fired in sequence with each other.
11 One of these rounds, the more lateral one, goes through and
12 actually comes out, exits the decedent's cheek bone, which I
13 don't know if you can see it from where you're sitting, but I
14 have another little rod here exhibiting the, showing that
15 round coming through the hole in the front of the sweat
16 shirt, then into the ground here, and the bullet is recovered
17 right here. The jacket of that bullet is recovered right
18 here. And so, you know, that the decedent, that is one of
19 the last shots, the decedent wasn't moving. That is, this is
20 the way the body is found, and this is where the bullet was
21 recovered.

22 This is the position of the sweat shirt. The only
23 difference really it's cut up by the EMT, cut around both
24 holes, but I think, no question, these are one of the last
25 two rounds that were fired. These are the last two rounds

Kovar - People - Direct

1 fired. That makes this round through the arm the first one
2 fired.

3 To clear up the amount of holes in the folds in the
4 sweat shirt, take these rods off, we can pull this up, you
5 can see there's now, four holes in the back of this, the
6 sweat shirt. These had the two, that had the bullet wipe,
7 hole number one and two. These here are the, told you, hole
8 number three. That is folded over. It then goes through
9 this hole here, which is number four in the hood. That one
10 round make those three holes. So, I think it does a good
11 representation of showing you that that one round made those
12 three holes.

13 Then this would, you know, I believe, just goes through
14 the sweat shirt here. That is the one more medial, closer to
15 the midline, just above the logo of the mermaid, then goes
16 right into the decedent's left head, on the left side goes
17 across, but does not exit the cheek bone.

18 Q Show the jury where Bobby's head is within the
19 confines of the sweat shirt?

20 A Hard to see through. The hood is down, but here,
21 the portion of the head here. So, the back portion of where
22 you can see on that poster we showed you, the holes are
23 really positioned back here, about six inches down on the
24 back, are now up by the back of head. And this sweat shirt
25 is pulled up. So, there is no question that somebody pulled

Kovar - People - Direct

1 that sweat shirt up prior to these rounds going through the
2 clothing and decedent.

3 Q Please retake the witness stand.

4 MR. HAYDEN: Nothing further at this time,
5 Your Honor. Thank you.

6 CROSS EXAMINATION

7 BY MR. LEMKE:

8 Q Detective, come back down.

9 A Yes.

10 Q Perhaps you can explain to this jury then how a
11 shot that is fired entered into, I am pointing to the
12 mannequin's right arm on the outside, would come through the
13 hole right on the inside -- there's a hole on each side,
14 correct?

15 A Yes.

16 Q And going to the portion of his back right ear
17 which is where a shot was, correct?

18 A Correct.

19 Q Without going through the hole of sweat shirt if
20 it's not below his head?

21 A Right. This round here, one thing that is
22 interesting about the hole here that is in his sweat shirt,
23 it's only 150 millimeters or so from the end of the cuff.
24 But, in fact, the round that goes through the decedent's arm
25 about three inches or so from the elbow. This is actually

Kovar - People - Cross

1 pulled up like that. Okay.

2 MR. HAYDEN: Let the record reflect the right
3 arm is pulled up so that the hole, if you will, is
4 roughly about three and-a-half inches down from the
5 elbow.

6 THE COURT: Let the record so reflect.

7 A I think you're right, counselor, in that the hood
8 is not over the head like this. In fact, it might be pulled
9 away from the head because this round that goes through the
10 arm, then reenters to the right side of the head doesn't go
11 through the hood, goes into the head and the hood is not up
12 at that time.

13 Q Well, you now displayed this as Mr. Hayden has
14 asked you with his head hidden underneath the top of this;
15 isn't that correct?

16 A Right, like it's shown here.

17 Q I don't see that?

18 A Because the EMT cut it off.

19 Q You weren't there, correct?

20 A I was there.

21 Q When they cut it?

22 A No, I was there after they cut it.

23 Q After they cut it. And what I am asking you to
24 tell this jury, explain to me, how if this is the body you're
25 saying it is, that this shot went in through here, when I say

Kovar - People - Cross

1 the right arm, up three inches from the elbow and entered
2 behind his ear, if this sweat shirt, as you say, this is a
3 double X sweat shirt?

4 A Yes.

5 Q That is the size you examined, in evidence, 35?

6 A That's correct.

7 THE COURT: You have to speak up.

8 A Yes.

9 I fit this, actually I think the round on the sleeve of
10 the right arm went through the sleeve and the body when he
11 was standing.

12 Q When he was standing. Thank you.

13 In fact, came in -- you can go back up. Thank you.

14 Based on your expertise, the decedent was standing when
15 the first shot's fired probably within, based upon the bullet
16 wipe that was found, from testimony earlier, from a weapon,
17 within forty-eight or four feet, correct?

18 A Yeah. There was no bullet wipe on that though, but
19 I think that is a very conservative estimate, four feet.
20 There's a lot of unburnt particle grains around that whole.
21 Basically what the firearm examiner said after, four feet.
22 He did not find any more particulate matter on his test
23 firings, you know. It was within four feet.

24 Q Four feet would be consistent?

25 A Consistent and very conservative. Probably closer.

Kovar - People - Cross

1 Q If he is standing and his hand's up, based upon, I
2 don't see an arrow here into this other bullet wound in the
3 other side of the head.

4 Did you do that for any particular reason?

5 A Because he would be standing. This is exhibiting
6 the last two rounds coming through the body.

7 Q Well, could you then stand this up.

8 Did you put a bullet track in the head from when he is
9 standing up to show the jury it's consistent with the track
10 coming through the arm, out of the arm and into the head with
11 the sweat shirt down.

12 Could you have done that?

13 A Could have done that, yes.

14 Q You didn't do that?

15 A No.

16 MR. LEMKE: Nothing else.

17 MR. HAYDEN: Something else.

18 REDIRECT EXAMINATION

19 BY MR. HAYDEN:

20 Q If the sweat shirt was grabbed from behind by a
21 bigger person and yanked back exposing the right side of the
22 back of the head, like that, could that account for why the
23 first shot didn't leave a hole in the back of the sweat
24 shirt?

25 A Yeah. I think something is pulling on that sweat

Kovar - People - Redirect

1 shirt. If you just do a defensive kind of thing like this,
2 it's probably going to go through the back of the hood of the
3 sweat shirt. You need somebody pulling that hood away from
4 the head so that the bullet does not go through the hood of
5 the sweat shirt.

6 Q It would be consistent with someone big and heavy
7 in front of the victim grabbing the sweat shirt from behind
8 and yanking it up over the head, and the first shot going in
9 as the victim tried to protect himself, and then as the
10 victim went down, the sweat shirt settling back, and then the
11 two final shots being fired into the victim's head. Would
12 that be consistent?

13 A Yes, it would.

14 MR. HAYDEN: Nothing further.

15 RECROSS EXAMINATION

16 BY MR. LEMKE:

17 Q So, it's now your testimony, detective, when I was
18 standing, that now this shirt is pulled over his entire head
19 and it exposed the side of his neck all the way up like this
20 and then all of a sudden, this shirt bounces back.

21 Is that what your testimony is?

22 A I can't say that.

23 Q You were there?

24 A No, I was not there.

25 Q You don't know?

Kovar - People - Redirect

1 A I know the hood was not in the trajectory of that
2 first round. I know that there was tears in the hood to show
3 force being pulled on the front of the hood and on the pocket
4 of that sweat shirt, and I know that the arm was up. And
5 that sleeve was pulled down like this when that round came
6 through.

7 Q Let me ask you this. You know that the tearing,
8 you said this tearing on the sweat shirt in the front,
9 correct?

10 A Correct.

11 Q You don't know whether that was cut previously for
12 any reason, do you?

13 A I do not know.

14 Q You can't tell us this, in fact, it was torn during
15 December third, correct?

16 A Well, it doesn't appear to be cut. It's torn.
17 When it was torn I can't say.

18 Q No, no, because you didn't check when the sweat
19 shirt was purchased, correct?

20 A I don't know when he purchased that sweat shirt.

21 Q You didn't examine any fibers or anything else that
22 would determine when it was torn, correct?

23 A I wouldn't be able to do that with fiber
24 examination.

25 Q Would you be able to determine whether or not the

Kovar - People - Redirect

1 fabric was washed before, whether that fabric has been frayed
2 as a forensic pathologist?

3 A I never dated a tear.

4 Q You didn't do it in this case, correct?

5 A That's correct.

6 MR. LEMKE: Nothing further.

7 MR. HAYDEN: Nothing further.

8 THE COURT: You can step down, detective.

9 Thank you.

10 (Witness excused.)

11 THE COURT: Approach the bench, counsel.

12 Take that evidence off and approach the bench,
13 counsel.

14 (Whereupon, there was a bench conference held off
15 the record.)

16 THE COURT: Mr. Hayden.

17 MR. HAYDEN: People rest, Your Honor.

18 THE COURT: Thank you.

19 MR. LEMKE: Defense rests, Your Honor.

20 THE COURT: Ladies and gentlemen, at this time
21 I am going to send you home for the weekend. I'm going
22 to admonish you, we will return 9:15 on Monday. We will
23 have closing remarks by counsel and then I will charge
24 you on the law. So, as you can see, we have gotten the
25 case to you much earlier than the parameters which I

Proceedings

1 told you during jury selection.

2 You must not converse among yourselves or with
3 anyone else upon any subject connected with the trial.
4 You must not read or listen to any accounts or
5 discussions of the case in the event it is reported by
6 newspapers or other media. You must not visit or view
7 the premise or place where the offence charged was
8 allegedly committed, or any other premises or place
9 involved in the case.

10 Prior to your being discharged, you must not
11 request, accept, agree to accept, or discuss with any
12 person the receiving or accepting of any payments or
13 benefits in consideration for supplying any information
14 concerning the trial.

15 You must promptly report to the Court any attempt
16 by any person to improperly influence any members of the
17 jury.

18 You shall not access the Internet or Worldwide Web
19 by any means available to you for the purposes of either
20 learning about this case or to learn about the law and
21 legal issues concerning this case.

22 Have a good weekend. We will reconvene 9:15
23 Monday. The officer will take a lunch order from you
24 because I intend to do summations and go right into the
25 charge.

Proceedings

1 Okay. Have a good weekend.

2 THE COURT OFFICER: Those jurors taking notes
3 please leave your note pas on the chair and follow me
4 out.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: Applications.

8 MR. LEMKE: Yes, Your Honor.

9 Your Honor, just so the record is clear, I would
10 have had the opportunity to move for a trial order of
11 dismissal regarding count two in the indictment after
12 the People had rested, rather than make the argument out
13 of the presence of the jury and then have them come back
14 and make arguments again, I will basically make
15 arguments to both for a trial order of dismissal.

16 Clearly the count which is the aiding and abetting
17 charge, Murder in the Second Degree, I would merely at
18 this point argue at the end of the People's case, even
19 taking the evidence in the light most favorable to the
20 People, they have not made out any prima facie case, and
21 for that reason I would ask this Court to grant my
22 application for a trial order of dismissal.

23 In the event that is denied, now that we have
24 rested, standard changes, it's whether or not the
25 evidence testified to, if believed credible, could

Proceedings

1 suffice in fact and could render a verdict of guilty
2 and, therefore, I ask the, same arguments, for a trial
3 order of dismissal.

4 THE COURT: Both applications are denied.

5 9:15 the jury comes back. By the time we take
6 their order, I get everything together, probably ten
7 o'clock. And, I intend to do both summations and go
8 into the charge. If it does seem like it's getting
9 lengthy I will break at the appropriate time for people
10 to use the facility, but my thinking is I'd like to keep
11 going. But again if I do feel that, because of the
12 length, I have to break I will do it at the appropriate
13 time, that there is no prejudice to anybody.

14 MR. HAYDEN: Yes.

15 THE COURT: Court's in recess. Have a good
16 evening.

17 (Whereupon, the trial was adjourned to June 13,
18 2005.)
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